IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Narain Prasad & Ors. Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.933/2004

DATE OF ORDER :: November 16, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr. A.K.Rajvanshy, for the petitioners.
Mr. Ashok Upadhayay, P.P.

BY THE COURT:

I have heard learned counsel for the petitioners and the Public Prosecutor. Perused the order impugned.

After investigation, the police has filed the challan against the present petitioners for forging of documents. The trial court took the cognizance of offence and proceeded with the trial. The matter is of 2000, which is evident from the order impugned.

The contention of the learned counsel for the petitioners is

that for the forging of documents, which is alleged to have been filed by the petitioners before the Sub-Divisional Magistrate, no court shall take cognizance unless the complaint is filed in the Court. Learned counsel for the petitioners has relied on a decision of this Court in Kishan Gopal Parasar vs. Allauddin, WLN 1996(2) 596.

The aforesaid question has been examined by the Hon'ble Supreme Court in Iqbal Singh Marwah vs. Meenakshi Marwah, **(2005) 4 SCC 370**, wherein the Honb'el Supreme Court held that the bar would be attracted only when the offences enumerated in S.195(1)(b)(ii) have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis-- If such offence is committed prior to its production or giving in evidence in court, no complaint by court would be necessary and a private complaint would be maintainable. Hon'ble Surpeme Court further held that complaint as to offence referred to in S.195(1)(b) was to be made by the court concerned only if it was expedient in the interests of justice and not in every case. Thus, broad view of clause (b)(ii) of S.195(1) i.e. extending it to cases where forgery of a document is committed prior to that document being produced or given in evidence in a proceeding in any court

would render the victim of such forgery or forged document remediless in cases where the court may not consider it expedient in the interests of justice to make a complaint. Further, the procedure for filing a complaint by court was such that it may delay the trial and thus lead to loss of evidence. That apart, the enlarged interpretation was capable of great misuse.

In view of the decision of the Hon'ble Supreme Court in Iqbal Singh Marwah vs. Meenakshi Marwah (supra), no case for interference is made out. The petition is, therefore, dismissed. Ad interim stay order dt. 28.8.2006 is vacated. The stay petition also stands dismissed.

[H.R.PANWAR],J.

m.asif/-